



## Michigan Supreme Court to Hear Appeal of Decision Upholding Appropriation of Public Funds for Private Schools

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The Michigan Supreme Court will soon decide whether public funds can be appropriated to private schools for certain purposes.

In May 2018, the Michigan Court of Claims ruled in favor of the plaintiffs in a lawsuit challenging the appropriation of \$2.5 million in the Michigan State School Aid Act (the "Act") to reimburse costs incurred by private schools related to compliance with state mandates. The Court of Claims issued an order enjoining and restraining the state from distributing funds to private schools under the Act on the basis that such an appropriation would violate the Michigan Constitution, which provides that no public money shall be appropriated "directly or indirectly" to aid or maintain private schools.

The case was appealed to the Michigan Court of Appeals, which reversed the Court of Claims' decision. The Court of Appeals held that "the Legislature may allocate public funds to reimburse nonpublic schools for actual costs incurred in complying with state health, safety and welfare laws." The Court of Appeals explained that, in performing its duties to comply with state mandates using public funds, a private school may be reimbursed if its actions (1) are, at most, incidental to teaching and providing educational services to private school students (noninstructional in nature), (2) do not constitute a primary function or element necessary for a nonpublic school to exist, operate, and survive, and (3) do not involve or result in excessive religious entanglement.

On June 24, 2019, the Michigan Supreme Court granted an application for leave to appeal the decision of the Court of Appeals. In his concurrence with the order granting leave to appeal, Justice Markman noted the importance of conclusively resolving this issue since it has been nearly three years since the legislature passed the appropriations.

The Michigan Supreme Court invited an amicus curiae brief from Public Funds, Public Schools and other interested persons.

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### **PRACTICE AREAS**

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We will continue to monitor and keep you apprised of developments in this important case. If you have any questions, please contact Laura Genovich.